

LEGAL FEES PAID BY FDIC AND RTC TO LOWE & ASSOCIATES

Audit Report No. 99-007
January 20, 1999



OFFICE OF AUDITS

OFFICE OF INSPECTOR GENERAL

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January 20, 1999

MEMORANDUM TO: James T. Lantelme
Assistant General Counsel
Legal Operations Section
Legal Division

FROM: 
David H. Loewenstein
Assistant Inspector General

SUBJECT: *Legal Fees Paid by FDIC and RTC to Lowe & Associates*
(Audit Report No. 99-007)

This report presents the results of an audit of Lowe & Associates, a law firm hired to provide legal services to the Federal Deposit Insurance Corporation (FDIC) and Resolution Trust Corporation (RTC). The Office of Inspector General (OIG) has an ongoing program for auditing law firm billings to ensure that such billings are adequately supported and comply with cost limitations set forth by FDIC and the former RTC. This report was prepared by the independent public accounting firm (IPA) of Urbach Kahn & Werlin for the FDIC OIG.

The objectives of the audit were to ensure that fee bills were adequately supported and in compliance with the cost limitations set by FDIC and RTC and that charges for legal services provided were reasonable. The audit covered billings paid by FDIC and RTC during the period January 1, 1992, through March 31, 1996. The total fees paid to the law firm during the audit period were \$3,459,287. The audit sample covered \$1,747,893, or 51 percent of the total.

The audit resulted in net questioned costs of \$209,704. The OIG made 7 recommendations to the Assistant General Counsel (AGC), Legal Operations Section, Legal Division, to disallow the questioned costs. The General Counsel (GC) provided a written response dated November 27, 1998, to a draft of this report. The response from the GC is included as an appendix to this report.

The Inspector General Act of 1978, as amended, requires the OIG to report on the status of management decisions on its recommendations in its semiannual reports to the Congress. To consider FDIC responses as management decisions in accordance with the act and related guidance, several conditions are necessary. First, the response must describe for each recommendation

- the specific corrective actions already taken, if applicable;
- corrective actions to be taken together with the expected completion dates for their implementation; and
- documentation that will confirm completion of corrective actions.

If any recommendation identifies specific monetary benefits, management must state the amount agreed or disagreed with and the reasons for any disagreement. In the case of questioned costs, the amount FDIC plans to disallow must be included in management's response.

If management does not agree that a recommendation should be implemented, it must describe why the recommendation is not considered valid.

Second, the OIG must determine that management's descriptions of (1) the course of action already taken or proposed and (2) the documentation confirming completion of corrective actions are responsive to its recommendations.

The GC's response to a draft of this report provided the requisites for a management decision on each of the recommendations. Therefore, no further response to these recommendations is required. Management disallowed a total of \$34,750. Although management's corrective actions differed from the recommended corrective actions, we consider management's response as providing the requisites for a management decision. A summary of the GC's response to recommendations 1 through 4, 6, and 7 and our analysis follows.

Disallow \$17,655 for unallowable professional fees (questioned cost) (recommendation 1).

The GC's response allowed \$6,241 and disallowed \$11,414. Specifically, the Legal Division disallowed \$9,608 for invoice time charges in excess of corresponding time sheets, \$1,300 for non-discounted travel time, and \$506 for duplicate time charges.

The Legal Division allowed \$3,249 for time spent preparing case budgets and status reports. The firm stated that the questioned charges were not related to the preparation of routine status reports. Rather, these reports contained recommendations for further action and in some instances were specifically requested by the Legal Division supervising attorney. The Legal Division accepted the law firm's explanation.

The Legal Division ratified \$2,679 in hourly rate charges that exceeded approved contract rates. The Legal Division also allowed \$280 in questioned duplicate time charges based on a comparison of the billed charges and the firm's diary time records. This comparison indicated that the charges were actually not duplicate charges. Finally, the Legal Division allowed \$33 in questioned non-discounted travel time based on a diary record provided by the firm substantiating that the time had been properly discounted. The OIG accepts the GC's explanations for the allowances and, accordingly, reduced questioned costs to \$11,414.

Disallow \$12,394 for excessive and inappropriate time charges (questioned cost)

(recommendation 2). The GC's response allowed all the questioned charges. The law firm explained that it was sometimes more effective and efficient to use legal assistants to organize and summarize cases at various times during the litigation process. The Legal Division reviewed the questioned entries and concluded that the tasks were appropriate for legal assistants rather than paralegals. The Legal Division further stated that the allocation of responsibility between outside counsel and their staff is subjective and that lacking a clear misallocation of resources the Legal Division will allow the charges. The OIG accepts the GC's explanation and reduced questioned costs to \$0.

Disallow \$71,662 for unsupported time charges (questioned cost, all of which is unsupported) (recommendation 3). The GC's response allowed \$52,882 and disallowed \$18,780. Specifically, the Legal Division disallowed \$9,053 of the \$60,351 questioned for missing time sheets or for time charges that could not be located on corresponding time sheets. The Legal Division allowed the remaining \$51,298 based on an analysis of several factors that were favorable to the firm. In the absence of time sheets, the OIG could not independently verify the questioned time charges. Therefore, the OIG will continue to question \$60,351.

In addition, the Legal Division allowed \$1,584 questioned because the description of services performed on the invoices did not agree with the descriptions on the attorneys' time sheets. The firm stated that, on occasion, it prepared expanded time entry descriptions based on discussions with time keepers and that transcription errors may have occurred. However, the law firm stated that it had not reviewed the specific questioned entries. The Legal Division reviewed the working papers and concluded that, with regard to one small entry, the description on the time sheet and invoice was not materially different. Lacking a more complete documented review of the specific questioned entries by the Legal Division, the OIG will continue to question \$1,584.

Finally, the Legal Division disallowed \$9,727 for time charges that were billed on one matter but charged to another matter. Based on the Legal Division's response, we will question \$71,662 (\$60,351 + \$1,584 + \$9,727).

Disallow \$10,004 for fees billed that did not include a precise description of the services performed (questioned cost, all of which is unsupported) (recommendation 4). The GC's response allowed all the questioned charges. Based on a review of the working papers, the Legal Division concluded that, while some invoice descriptions were less precise than others, the descriptions adequately met the billing standards communicated to outside counsel. The OIG accepts the GC's explanation and reduced questioned costs to \$0.

Disallow \$312 for unallowable expenses (questioned cost) (recommendation 6). The GC's response allowed all the questioned charges. The firm explained that the U.S. Bankruptcy Court required \$120 be paid for filing fees and, therefore, the charges should be allowable. In addition, \$192 questioned as unallowable local travel charges actually involved travel in excess of 50 miles and, therefore, was allowable. The Legal Division agreed with the law firm's explanations. The OIG accepts the GC's explanation and reduced questioned costs to \$0.

Disallow \$2,557 for undocumented reimbursable expenses (questioned cost, all of which is unsupported) (recommendation 7). The GC's response allowed \$253 and disallowed \$2,304. The law firm provided documentation supporting hotel charges for \$253. The Legal Division disallowed the remaining \$2,304. The OIG accepts the GC's explanation and reduced questioned costs to \$2,304.

Based on the IPA's audit work, \$209,704 was questioned in the draft report transmitted to management. In addition to the recommendations previously discussed, in recommendation 5, the OIG recommended that FDIC analyze the qualifications of employees working on RTC matters but not listed on the firm's legal services agreement, determine how much of the \$95,120 in questioned costs for these charges should be ratified, and disallow any of the charges not approved. The Legal Division disallowed \$2,252 and approved \$92,868. The OIG accepts the action taken by management and, accordingly, reduced questioned costs to \$2,252.

After considering \$34,750 in disallowances taken by management and management's comments on the IPA's findings, we will report questioned costs of \$87,632 (including \$73,966 in unsupported costs) in our *Semiannual Report to the Congress*.

**LEGAL SERVICES PROVIDED TO RTC AND FDIC BY
LOWE & ASSOCIATES**

January 1, 1992 through March 31, 1996

UK
&W **Urbach Kahn & Werlin PC**
CERTIFIED PUBLIC ACCOUNTANTS

**LEGAL SERVICES PROVIDED TO RTC AND FDIC BY
LOWE & ASSOCIATES**

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LEGAL SERVICES PROVIDED TO RTC AND FDIC BY LOWE & ASSOCIATES

BACKGROUND

Both the Resolution Trust Corporation (RTC) and the Federal Deposit Insurance Corporation (FDIC) have used outside counsel for many of its legal services. Outside counsel providing legal services to RTC and FDIC were required to subscribe to the RTC and FDIC Legal Division selection and retention process.

The RTC entered into a two-year *Legal Service Agreement (LSA)* with Lowe & Associates (L&A) on February 15, 1992. RTC renewed the LSA on February 18, 1994, making the agreement effective through February 17, 1996. On May 22, 1993, the FDIC entered into a two-year LSA with L&A. FDIC renewed the LSA on May 15, 1995, effective through May 14, 1997. The LSA outlines RTC and FDIC Legal Division policies and procedures with which outside counsel are expected to comply. In addition, the LSA identifies L&A professionals and billing rates authorized by RTC and FDIC. L&A's general responsibilities pertaining to ethics, reporting requirements, billing information, non-reimbursable professional services and charges, conflicts of interest, and other items are set forth in the *RTC Guide for Outside Counsel*, and the *FDIC Guide for Legal Representation and Guide for Outside Counsel*. The specific detailed billing procedures and requirements are set forth in the *FDIC Outside Counsel Fee Bill Payment Program Instruction Manual*.

L&A provides a complete range of legal services, including commercial and banking litigation, to a diverse group of industries. L&A employs approximately four attorneys in Alexandria, Virginia.

According to the records supplied to Urbach Kahn & Werlin PC (UKW) by FDIC, for the period January 1, 1992, through March 31, 1996, L&A billed RTC and FDIC \$3,459,287 for legal services and reimbursable expenses.

FDIC's Office of Inspector General (OIG) engaged UKW to perform an audit of RTC and FDIC related legal services provided by L&A for the period January 1, 1992, through March 31, 1996, in accordance with *Government Auditing Standards*. The audit field work was performed in the Alexandria office of L&A during April 1998.

OBJECTIVES, CONCLUSIONS, SCOPE, AND METHODOLOGY

Objectives and conclusions

Objective: Determine whether L&A provided legal services to RTC and FDIC in accordance with *RTC Guide for Outside Counsel*, *FDIC Guide for Legal Representation and Guide for Outside Counsel*, *FDIC Outside Counsel Fee Bill Payment Program Instruction Manual*, the *Legal Services Agreements*, RTC policies and procedures, and applicable laws and regulations.

Conclusion: *With respect to the items tested, we determined L&A generally complied with the above provisions. However, the audit disclosed instances of non-compliance. (See pages 7-14.)*

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Objectives and conclusions (continued)

Objective: Determine whether L&A maintained an adequate system of internal controls for identifying, tracking, and resolving any existing or potential conflicts of interest.

Conclusion: *With respect to the systems tested, we determined internal controls for identifying and tracking conflicts of interest, actual or potential, were adequate.*

Objective: Determine whether L&A supervised and staffed legal cases commensurate with the duties to be performed, billed time charges which were reasonable, performed professional services in a timely manner and in accordance with all regulations, and provided competent professionals to perform the tasks assigned.

Conclusion: *With respect to the cases reviewed, we determined L&A to be competent and efficient in providing legal services to RTC and FDIC. However, the audit disclosed certain instances of unallowable or inappropriate charges. (See pages 7-9, 12).*

Objective: Determine whether L&A billed professional fees which were reasonable and adequately supported.

Conclusion: *With respect to time charges invoiced to RTC and FDIC, the audit disclosed certain instances of unreasonable and unallowable charges. (See pages 7-10).*

Objective: Determine whether L&A billed reimbursable expenses which were adequately supported, reasonable, allowable under the terms of the LSA, and billed at L&A's actual cost.

Conclusion: *With respect to reimbursable expenses, the audit disclosed certain instances of unallowable charges and undocumented reimbursable expenses (See pages 13-14).*

Overall, based on the procedures performed, and as detailed in Section III of this report, L&A's system provided for accurate billings to RTC and FDIC in compliance with RTC and FDIC policies and guidelines.

Scope and methodology

The scope of the engagement entailed an audit of selected legal fee invoices submitted to RTC and FDIC for services provided by L&A for the period January 1, 1992, through March 31, 1996. The audit was conducted by UKW from March 31, 1998, through April 15, 1998, in L&A's office in Alexandria, Virginia.

L&A combined different tasks and activities by individual attorneys into single time entries (block billing), rather than recording the time spent on each individual task or activity. The fees billed in the format, known as block billing, totaled \$480,905 for RTC and \$44,110 for FDIC.

The FDIC *Outside Counsel Fee Bill Payment Program Instruction Manual*, effective for all fee bill submissions postmarked on or after November 1, 1991, regardless of when services were performed, specifically prohibits use of the block billing format. The instruction manual states that each entry must include a description of the legal services performed even if they were performed

LEGAL SERVICES PROVIDED TO RTC AND FDIC BY LOWE & ASSOCIATES

Scope and methodology (continued):

on the same day by the same person. The guidelines further state that the fee bill entries are to provide a detailed breakdown of each individual service performed and the associate time billed for that service. In addition, an RTC memo, dated June 30, 1995, prohibited the block billing practice effective July 31, 1995.

Block billing constitutes a scope limitation; therefore, we could not determine the reasonableness of \$525,015 in block billed fees.

Legal fees' invoices subject to audit are summarized as follows:

Paid by RTC	\$3,186,152
Paid by FDIC	<u>273,135</u>
Total invoices in population	<u>\$3,459,287</u>

The following is a schedule detailing the selection of the audit sample:

	<u>Total RTC and FDIC</u>	<u>RTC</u>	<u>FDIC</u>
Total amount of invoices selected	\$ <u>1,747,893</u>	\$ <u>1,561,955</u>	\$ <u>185,938</u>
Approximate percentage tested	<u>51%</u>		

UKW conducted the audit in accordance with *Government Auditing Standards*. The following procedures were used in performing the audit:

- UKW selected 115 invoices totaling \$1,747,893 (50 percent of the total invoice dollars). Although the majority of invoices were selected based on the dollar amount, some were randomly selected. RTC invoices amounted to \$1,561,955 (106 invoices) and FDIC invoices amounted to \$185,938 (9 invoices).
- UKW, in conjunction with FDIC, selected four case files for legal review, totaling \$377,000 in billings to RTC. The cases reviewed were principally chosen on the basis of the dollar amount of fees billed and the nature of the services provided.
- UKW evaluated L&A's compliance with the following: *RTC Guide for Outside Counsel*; *FDIC Guide for Legal Representation* and *Guide for Outside Counsel*; *FDIC Outside Counsel Fee Bill Payment Program Instruction Manual*; the Legal Services Agreement; RTC policies and procedures; and 12 CFR, Part 1606. This evaluation included reviewing L&A's accounting and billing systems, testing invoices to supporting documentation, and testing L&A's actual implementation to determine whether it addressed the requirements of each pronouncement referenced above.
- UKW evaluated L&A's internal control structure by reviewing L&A's policies and procedures, testing systems designed by L&A to bill RTC and FDIC for professional services and reimbursable expenses, and testing L&A's system for identifying, tracking and resolving any existing or potential conflicts of interest. In addition, UKW interviewed L&A's management and professional staff to discuss and understand billing policies and procedures, and methods

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Scope and methodology (continued):

employed by management for identifying, tracking and resolving any existing or potential conflicts of interest.

- UKW performed the following procedures to audit L&A's billings to RTC and FDIC for professional fees:
 - ✓ Compared the list of professional staff authorized in the LSA to those on the legal invoices rendered;
 - ✓ Compared the professional staff's authorized billing rates with actual billing rates;
 - ✓ Attempted to verify the accuracy of fees charged by comparing hours billed with original source documents;
 - ✓ Reviewed the sample of invoices for duplicate payments and billings;
 - ✓ Reviewed the sample invoices for block billed entries and entries with vague descriptions;
 - ✓ Verified RTC and FDIC were billed at rates reflecting substantial discounts from L&A's standard rates by reviewing bills rendered to non-RTC clients;
 - ✓ Determined hours charged by L&A attorneys were not excessive and were reasonable, including a review of instances in which attorneys billed a total of more than 12 hours in one day;
 - ✓ Determined L&A did not bill RTC and FDIC for researching its own conflicts of interest, preparing RTC and FDIC legal bills or budgets, or more than 50 percent of the hourly rate for attorney travel;
 - ✓ Verified reimbursable expense charges were related to the applicable RTC and FDIC matter;
 - ✓ Identified the elements comprising reimbursable expense charges and determined whether the charges complied with LSA, RTC and FDIC guidelines;
 - ✓ Determined if reimbursable expense charges were adequately supported;
 - ✓ Determined if reimbursable expense charges were billed to RTC and FDIC at cost;
 - ✓ Determined if L&A received approval from an RTC or FDIC supervising attorney for reimbursable expense charges, where applicable;
 - ✓ Reviewed reimbursable expense charges to determine if the use and cost were reasonable and were not excessive; and
 - ✓ Documented the methods used by L&A to retain any third-party services, where applicable.

LEGAL SERVICES PROVIDED TO RTC AND FDIC BY LOWE & ASSOCIATES

Scope and methodology (continued):

- UKW's subcontracted attorney performed the following procedures on the four case files:
 - ✓ Analyzed legal bills to identify attorneys initially assigned to RTC and FDIC matters and documented any changes in assignments to ensure RTC and FDIC were not charged for new attorneys to review files, motions or pleadings, or to conduct any other activity to familiarize themselves with the case;
 - ✓ Reviewed legal bills to determine if attorneys were spending substantial time reading background information, reviewing research or case law, or reviewing files;
 - ✓ Determined if services billed by attorneys and paralegals were commensurate with the duties typically associated with professionals in these areas;
 - ✓ Reviewed timesheets and invoices for excessive intra-office conferences;
 - ✓ Reviewed written products prepared by L&A's attorneys and paralegals to determine whether the time charges incurred on specific issues were commensurate with the scope and complexity of those issues; and
 - ✓ Evaluated the qualifications of paralegals assigned to RTC and FDIC cases to ensure they were not performing clerical or secretarial tasks.

EXIT CONFERENCE

On June 16, 1998, representatives of UKW and L&A attended an exit conference in the Alexandria, Virginia office of L&A. The exit conference provided for a general discussion of the findings and other issues to be disclosed in this report. During this discussion, the firm was informed of a specified period of time to formally respond to the report.

This report is intended for the use of the Office of the Inspector General - Federal Deposit Insurance Corporation (FDIC) and the FDIC's management. However, this report is a matter of public record, and its distribution is not limited.

Urbach Kahan & Worlin PC

Washington, DC
April 15, 1998

SECTION II

SUMMARY OF FINDINGS AND QUESTIONED COSTS

LEGAL SERVICES PROVIDED TO RTC AND FDIC BY LOWE & ASSOCIATES

SUMMARY OF FINDINGS AND QUESTIONED COSTS

We identified net questioned costs of \$209,704 of which \$84,223 are unsupported. The \$209,704 in questioned costs includes \$206,835 in questioned professional fees. Questioned fees include amounts relating to excessive hourly rates, unauthorized personnel, attorneys performing paralegal functions, duplicate billings, rates billed during travel, unsupported time and vague descriptions. In addition, we are questioning claims for reimbursable expenses in the amount of \$2,869. The expenses questioned consist of unsupported disbursements, excessive/unallowable travel expenses and unallowable charges.

Description	Condition Number	RTC	FDIC	Questioned Costs
Unallowable professional fees	1	\$ 14,908	\$2,747	\$ 17,655
Excessive/inappropriate time charged to case matters	2	12,206	188	12,394
Unsupported time charges	3	69,491	2,171	71,662
Vague descriptions	4	9,914	90	10,004
Unauthorized personnel	5	95,120	-	95,120
Subtotal Fees		\$201,639	\$5,196	\$206,835
Unallowable expenses	6	\$ 312	\$ -	\$ 312
Unsupported reimbursable expenses	7	2,557	-	2,557
Subtotal Expenses		\$ 2,869	\$ -	\$ 2,869
Total Fees and Expenses		\$204,508	\$5,196	\$209,704

SECTION III

FINDINGS AND RECOMMENDATIONS

LEGAL SERVICES PROVIDED TO RTC AND FDIC BY LOWE & ASSOCIATES

FINDINGS AND RECOMMENDATIONS

1) **UNALLOWABLE PROFESSIONAL FEES**

Condition

L&A billed RTC and FDIC for the following unallowable professional time charges. The following conditions resulted in questioned costs of \$17,655:

<u>Description</u>	<u>RTC Amount</u>	<u>FDIC Amount</u>
L&A billed RTC for time spent preparing case budgets, status reports, and for invoicing RTC	\$ 3,249	\$ -
L&A billed RTC and FDIC for travel time not discounted by at least 50 percent as required by RTC and FDIC policies (Questioned amount reflects only 50% of professional travel time billed)	1,300	33
L&A billed RTC and FDIC at hourly rates which exceeded the approved contract rate	45	2,634
L&A billed RTC and FDIC for duplicate time charges	744	42
L&A billed RTC and FDIC for hours exceeding those on the corresponding time record or the bill	<u>9,570</u>	<u>38</u>
 Total questioned costs	 <u>\$ 14,908</u>	 <u>\$ 2,747</u>

Criteria

The *RTC Outside Counsel Deskbook*, dated January 1992, page 6-6, states, "The means or method of accomplishing the work or providing the service must be appropriate (e.g., generally an attorney should not perform the service if a paralegal or a secretary can perform it as efficiently and effectively at less expense or no expense)...."

The *RTC Guide for Outside Counsel*, dated February 1992, page 13, states, "The RTC does not pay for...time devoted to the preparation of bills or routine status reports...."

The *RTC Outside Counsel Deskbook* dated January 1992, pages 6-7, states, "Clerical time for photocopying will not be paid." It further states, "The fee or cost charged should not represent a service that is customarily included in the normal overhead or administrative expense of running a law firm...."

The *RTC RLIS Forms and Procedures Deskbook for Outside Counsel*, dated June 1993, pages 4-5, states, "The amount charged should be time efficient and reasonable in all respects."

LEGAL SERVICES PROVIDED TO RTC AND FDIC BY LOWE & ASSOCIATES

FINDINGS AND RECOMMENDATIONS

The *FDIC Guide for Outside Counsel*, dated December 1991, page 33 states, "Outside counsel is required to retain copies of all bills and underlying supporting material, including original time sheets and time and expense adjustment records for at least four years after final payment."

The *RTC Guide for Outside Counsel*, dated February 1992, pages 5-6, states, "The Legal Division also requires Outside Counsel to reduce the hourly rate charged to the RTC while an attorney is traveling by no less than 50 percent, unless legal work is being performed for the Corporation during travel."

The *FDIC Guide for Outside Counsel*, dated December 1991, page 13, states, "We also require outside counsel to reduce the hourly rate charged to the FDIC by 50 percent, while an attorney is traveling unless legal work is being performed."

The *RTC Guide for Outside Counsel*, dated February 1992, states, "No invoice will be processed or paid unless it is submitted on the standard RTC invoice form and certified as to its accuracy by an authorized representative of the firm."

The *RTC Guide for Outside Counsel*, dated February 1992, page 15, states, "The Legal Division generally enters into a two-year LSA. Absent compelling reasons, no increase in the fee or rate schedule will be permitted during the term of the LSA."

The *FDIC Guide for Outside Counsel*, dated December 1991, page 15, states, "The Division generally enters into a two-year LSA. Absent compelling reasons, no increase in the fee or rate schedule attached to the LSA will be permitted during its term."

Recommendation

1. We recommend FDIC disallow \$17,655 for unallowable professional fees billed by L&A (questioned costs of \$14,908 billed to RTC and \$2,747 billed to FDIC).

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FINDINGS AND RECOMMENDATIONS

2) EXCESSIVE/INAPPROPRIATE TIME CHARGED TO CASE MATTERS

L&A billed RTC and FDIC for the following excessive/inappropriate time charged to case matters. The following conditions resulted in questioned costs of \$12,394:

<i>Condition</i>	<u>RTC Amount</u>	<u>FDIC Amount</u>
Services were performed by personnel that were overqualified for the level of task	\$10,934	\$188
L&A billed excessive time charges	<u>1,272</u>	<u>-</u>
	<u>\$12,206</u>	<u>\$188</u>

Criteria

The RTC *RLIS Forms and Procedures Deskbook for Outside Counsel*, dated June 1993, page 4-5, states, "The amount charged should be time efficient and reasonable in all respects."

The RTC *Outside Counsel Deskbook*, dated January 1992, page 6-6, states, "The means or method of accomplishing the work or providing the service must be appropriate (e.g., generally an attorney should not perform the service if a paralegal or a secretary can perform it as efficiently and effectively at less expense or no expense)."

The FDIC *Guide for Outside Counsel*, dated December 1991, page 19, states, "Our overall objective is to obtain the best resolution of legal matters at the lowest practicable cost....We also expect you to control time carefully and to avoid both unnecessary review of documents and files and extensive polishing of documents."

Recommendation

2. We recommend FDIC disallow \$12,394 in excessive/inappropriate time charges billed by L&A (questioned costs of \$12,206 billed to RTC and \$188 billed to FDIC).

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FINDINGS AND RECOMMENDATIONS

3) **UNSUPPORTED TIME CHARGES**

Condition

L&A billed RTC and FDIC for unsupported time. These unsupported time charges, in the amount of \$71,662, have been classified under one of the conditions listed below.

<u>Description</u>	<u>RTC Amount</u>	<u>FDIC Amount</u>
Professional time entries on billings could not be verified to attorneys' original time records. Time entry could not be located on the timesheet	\$26,255	\$2,057
Professional time entries on billings could not be verified to the attorneys' original time records. The description of services performed did not agree	1,584	-
Professional time entries on billings could not be verified to attorney's original time records. L&A could not provide timesheets for certain attorneys for January 1993.	32,039	-
Time billed under a matter other than that charged by the employee (on the time record)	<u>9,613</u>	<u>114</u>
Total questioned cost	<u>\$69,491</u>	<u>\$2,171</u>

Criteria

The *RTC Guide for Outside Counsel*, dated February 1992, page 30, states, "No invoice will be processed or paid unless it is...certified as to its accuracy by an authorized representative of the firm."

The *RTC Guide for Outside Counsel*, dated February 1992, page 31, states, "Outside Counsel is required to retain copies of bills and underlying documentation, including original time sheets...for four years after payment."

The *RTC Guide for Outside Counsel*, dated February 1992, page 15, states, "The Legal Division generally enters into a two-year LSA. Absent compelling reasons, no increase in the fee or rate schedule will be permitted during the term of the LSA."

The *FDIC Guide for Outside Counsel*, dated November 1992, page 33, states, "Outside counsel is required to retain copies of all FDIC and RTC-related bills and underlying supporting material, including original time sheets and time and expense adjustment records, for at least four years after final payment."

**LEGAL SERVICES PROVIDED TO RTC AND FDIC BY
LOWE & ASSOCIATES**

FINDINGS AND RECOMMENDATIONS

Recommendation

3. We recommend FDIC disallow \$71,662 of unsupported time charges billed by L&A (questioned cost of \$69,491 billed to RTC and \$2,171 billed to FDIC, all of which is unsupported).

LEGAL SERVICES PROVIDED TO RTC AND FDIC BY LOWE & ASSOCIATES

FINDINGS AND RECOMMENDATIONS

4) **VAGUE DESCRIPTIONS**

Condition

The Legal Specialist found L&A's narrative descriptions of professional services on time entries did not adequately detail the services provided to RTC and FDIC and were insufficient to determine the nature of the work performed and the value of the services provided to RTC and FDIC. L&A billed RTC \$9,914 and FDIC \$90 for professional fees supported by vague descriptions.

Examples of vague descriptions include: "review documents," "draft memorandum," "draft letter," "draft correspondence," "review pleadings," "review applicable law," "review research to be performed," and "review of things to be done."

These descriptions were inadequate for determining either the activities involved or the appropriateness of the amount of time charged to RTC and FDIC and resulted in questioned costs of \$10,004 (\$9,914 billed to RTC and \$90 billed to FDIC).

Criteria

The *RTC Outside Counsel Deskbook*, dated January 1992, page 5-6, states, "For each matter, the listing of fees and services shall be fully itemized...and a precise description of the service(s) performed."

The *FDIC Guide for Outside Counsel*, dated December 1991, page 31, states, "Fees and disbursements must be itemized separately on each bill."

Recommendation

4. We recommend FDIC disallow \$10,004 in fees billed by L&A which did not include a precise description of the services performed (questioned cost of \$9,914 billed to RTC and \$90 billed to FDIC, all of which are unsupported).

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FINDINGS AND RECOMMENDATIONS

5) UNAUTHORIZED PERSONNEL

L&A billed RTC for unauthorized attorneys and paralegals. The following conditions resulted in questioned costs of \$95,120:

Condition

	<u>RTC Amount</u>
L&A billed RTC for attorneys/paralegals not approved in the corresponding LSA (earlier of inception of first LSA or February 1992)	\$49,390
L&A billed RTC for a paraprofessional prior to his services being authorized in an LSA by RTC	<u>45,730</u>
Total questioned costs	<u>\$95,120</u>

No exceptions of this nature were found on FDIC invoices tested.

Criteria

RTC Guide for Outside Counsel, dated February 1992, page 10, states, "The firm also must provide a matrix which identifies all attorneys and para-professionals the firm offers to provide services to the Corporation, and which sets forth, for each attorney and paraprofessional the following: (1) state licenses; (2) particular area(s) of expertise; (3) years of practice; (4) time with the firm; (5) status within the firm as partner or shareholder, senior associate, associate or paraprofessional; (6) billable rates in accordance with the firm's usual rate structure."

Recommendation

5. We recommend FDIC require responsible personnel to analyze the qualifications for employees who worked on RTC matters, but were not listed in LSA, and determine how much of the \$95,120 in questioned costs for these charges should be retroactively ratified, disallowing any of those charges not approved (questioned costs of \$95,120).

**LEGAL SERVICES PROVIDED TO RTC AND FDIC BY
LOWE & ASSOCIATES**

FINDINGS AND RECOMMENDATIONS

6) UNALLOWABLE EXPENSES

Condition

L&A billed RTC for certain expenses not allowable under RTC policies and procedures. The following conditions resulted in questioned costs of \$312:

<u>Description</u>	<u>RTC Amount</u>
L&A billed RTC for U.S. Bankruptcy court filing fees	\$120
L&A billed RTC for nonbillable travel expenses, including parking fees	<u>192</u>
Total questioned cost	<u>\$312</u>

No exceptions of this nature were found on FDIC invoices tested.

Criteria

The *RTC RLIS Forms and Procedures Deskbook for Outside Counsel*, dated June 1993, page 4-5, states, "costs charged should not represent a service that is customarily included in the normal overhead or administrative expense of running a law firm."

The *RTC RLIS Forms and Procedures Deskbook for Outside Counsel*, dated June 1993, page 4-10, rules on reimbursable travel costs states, "...authorized travelers are entitled to reimbursement for necessary transportation costs en route to and while assigned to places of temporary duty **more than fifty (50)** miles distant from their residences...." [emphasis added].

Recommendation

6. We recommend FDIC disallow \$312 in unallowable expenses billed by L&A (questioned cost of \$312).

LEGAL SERVICES PROVIDED TO RTC AND FDIC BY LOWE & ASSOCIATES

FINDINGS AND RECOMMENDATIONS

7) **UNSUPPORTED REIMBURSABLE EXPENSES**

Condition

L&A billed RTC \$2,557 in expenses for which it could not provide adequate supporting documentation and expenses which were billed to incorrect matters. The following unsupported reimbursable expenses result in total questioned costs of \$2,557:

<u>Description</u>	<u>RTC Amount</u>
Unsupported expenses (no <u>original</u> vendor invoices) (e.g. courier service, copy charges)	\$2,544
Inappropriate/insufficient support (e.g. long distance telephone charges)	<u>13</u>
Total unsupported expenses	<u>\$2,557</u>

Criteria

The *RTC Guide for Outside Counsel*, dated February 1992, page 31, states, "Outside Counsel is required to retain copies of all bills and underlying documentation...[relating to reimbursable expenses]...for four years after payment."

The *RLIS Forms and Procedures Deskbook for Outside Counsel*, dated June 1993, pages 4-5, states, "Costs charged should not represent a service that is customarily included in the normal overhead or administrative expense of running a law firm."

The RTC *RLIS Forms and Procedures Deskbook for Outside Counsel*, dated June 1993, page 42, states, "Prepare and send one invoice per matter per billing period to the RTC Legal Office that is supervising the work being performed...."

Recommendation

7. We recommend FDIC disallow all undocumented reimbursable expenses billed by L&A (questioned cost of \$2,557 billed to RTC, all of which is unsupported).

SECTION IV
OTHER MATTERS

**LEGAL SERVICES PROVIDED TO RTC AND FDIC BY
LOWE & ASSOCIATES**

OTHER MATTERS

Allocation of RTC and FDIC Hours

During our review, we identified several instances where the billing partner allocated attorney's time among several matters within a case. As a result, we determined underbillings on several invoices. Since our review was of only selected invoices, we could not determine whether L&A overbilled the RTC and FDIC in total.

FDIC**Federal Deposit Insurance Corporation**

Washington, D.C. 20429

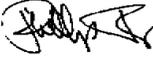
Legal Division

November 27, 1998

MEMORANDUM TO: David H. Loewenstein
Assistant Inspector General

THROUGH: 
William F. Kroener, III
General Counsel


William S. Jones
Supervisory Counsel

FROM: 
Phillip F. Ty
Counsel

SUBJECT: Audit of Legal Expenses Paid by RTC and FDIC to Lowe & Associates (Alexandria, Virginia)

This memorandum constitutes the Legal Division's response to both the Office of Inspector General's ("OIG") draft audit report ("Report") (Exhibit A) and the comments of Lowe & Associates ("Lowe" or the "Firm") dated August 26, 1998 (Exhibit B). The Firm billed RTC and FDIC \$3,459,287 for legal fees and expenses from January 1, 1992, through March 31, 1996. The audit was conducted by Urbach Kahn & Werlin, an independent public accounting firm ("IPA"), and covered 115 invoices totaling \$1,747,893. The Report questions \$209,704. After reviewing the Report and the Firm's response, the Legal Division will disallow a total amount of \$34,750.

The Legal Division's position regarding each recommendation is explained below in the order in which it appears in the Report.

Recommendation No. 1: That the FDIC disallow \$17,655 for unallowable professional fees billed by the Firm.

The Report states that the Firm billed the RTC and FDIC for unallowable professional time charges in the total amount of \$17,655 (\$14,908 for RTC and \$2,747 for FDIC). The Report itemized these amounts as follows:

1. (\$3,249) The Report states that the Firm billed RTC for time spent preparing case budgets, status reports, and for invoicing RTC.

Note: The attachments referred to in the Legal Division's response are not included in this appendix.

In its response, the Firm states that the status reports contained recommendations for further action and are a necessary adjunct to the practice of law and the ethical requirements of the Virginia State Bar. According to the Firm, these reports and recommendations do not fall within the classification of "routine status reports." The Firm states that the preparation of a due diligence report and analysis of potential claims is at the "heart" of their work as counsel. The Firm further states that certain PLS case budgets were specifically requested by the RTC supervising attorney, authorized to be billed and were approved for payment by the RTC supervising attorney. **The Legal Division accepts the Firm's explanation, and therefore will allow \$3,429.**

2. (\$1,300 for RTC and \$33 for FDIC) The Report states that the Firm billed RTC and FDIC for travel time not discounted by at least 50 percent as required by RTC and FDIC policies. (Questioned amount reflects only 50% of travel time billed.)

After a review of the Firm's time entries, the Firm agrees that \$1,300 questioned travel time for RTC should be disallowed; however, with respect to the \$33 for FDIC, the Firm provided a copy of the Firm's Diary and Work Record which shows that travel time was discounted at 50%. **The Legal Division will disallow and demand reimbursement of \$1,300 and will allow \$33.**

3. (\$45 for RTC and \$2,634 for FDIC) The Report states that the Firm billed RTC and FDIC at hourly rates which exceeded the approved contract rate.

With respect to the \$45 for RTC, a review of the invoice shows that on August 3, 1995, [material redacted] billed at \$75 per hour. The Firm, in its letter dated June 29, 1994, to the RTC Atlanta office requested approval of \$75 per hour for [material redacted]. There was apparently no response to the Firm's letter. This rate appears to be reasonable compared to the Firm's approved LSA rates and **the Legal Division will ratify and allow \$45.**¹

In connection with \$2,634 for FDIC, the Report states that the rates billed exceeded the approved contract rates. Below is a comparison of the approved contract

¹As the General Counsel has complete delegated authority regarding hiring and paying outside counsel with respect to issues raised in the audit report, his signing of this memorandum should be deemed a ratification of the charges to the extent indicated herein.

rates pursuant to the Firm's February 18, 1994 LSA (which were in effect until February 18, 1996) and the questioned rates charged in invoices for April 1994 and August 1995. The rates are identical. **The Legal Division, therefore, will allow \$2,634.**

Rates Charged in Invoices for
April 1994 and August 1995:

[material redacted] \$172 per hour
[material redacted] \$132 per hour
[material redacted] \$140 per hour
[material redacted] \$76 per hour
[material redacted] \$75 per hour

Rates Approved in Firm's
February 18, 1994 LSA:

[material redacted] \$172 per hour
[material redacted] \$132 per hour
[material redacted] \$140 per hour
[material redacted] \$76 per hour
[material redacted] (previously explained)

4. (\$744 for RTC and \$42 for FDIC) The Report states the firm billed RTC and FDIC for duplicate time charges. The charges are itemized as follows:

\$464 for RTC - July 9, 1995 - The Firm agrees that this is a duplicate charge.

\$34.40 for RTC - March 17, 1995 - A review of the invoice does not show a duplicate charge.

\$34.40 for RTC - October 5, 1995 - A review of the invoice shows that there were two separate charges of .20 each for the same telephone call. However, a review of the Firm's Diary shows a time entry of .4 for the telephone call.

\$34.40 for RTC - October 5, 1995 - This questioned cost of \$34.40 for October 5, 1995, seems to duplicate the same amount of \$34.40 for the same date, October 5, 1995, questioned above and which we have determined to allow.

\$51.60 for RTC - October 5, 1995 - A review of the invoice shows that there were two separate charges of .3 of an hour each for similar work. However, a review of the Firm's Diary shows a time entry of .7 for the work performed.

\$124.80 for RTC - February 23, 1995 - A review of the invoice shows that there were two separate charges of .80 and .90 for similar work performed. However, a review of the Firm's Diary shows a time entry of 6.2 for the work performed.

\$42 for FDIC - November 16, 1995 - A review of the invoice shows that there were two separate charges of .70 for similar work performed. A review of the audit work papers shows only one time entry of .70 for the work performed, and thus, this is a duplicate charge.

The Legal Division will disallow and demand reimbursement of \$506 (\$464 + \$42), however, it will allow the remaining charges of \$280.

APPENDIX

APPENDIX

5. The Report states that the Firm billed RTC \$9,570 and FDIC \$38 for hours exceeding those on the corresponding time record. The Report's exhibit shows that 92 charges were questioned for exceeding the time appearing on the time record.

Some examples of the 92 questioned charges are as follows:

On March 19, 1995, [material redacted] billed 10.5 hours. However, the Firm's Diary and Work Record ("Diary") reflected only 6.5 resulting in excess billing of 4 hours at \$150 per hour or \$600.

On June 26, 1995, [material redacted] billed 1.6 hours. The Firm's Diary reflected only .8 of an hour resulting in excess billing of .8 hours at \$172 per hour or \$137.60.

On June 29, 1995, [material redacted] billed 3.9 hours. The Firm's Diary reflected only 2.1 hours resulting in excess billing of 1.8 hours at \$172 per hour or \$309.60.

On July 12, 1995, [material redacted] billed 3.6 hours. The Firm's Diary reflected only 2.6 hours resulting in excess billing of 1 hour at \$150 per hour or \$150.

On February 14, 1992, [material redacted] billed 3 hours. The Firm's Diary reflected only 1.6 hours resulting in excess billing of 1.4 hours at \$150 per hour or \$210.

On February 21, 1992, [material redacted] billed 2.3 hours. The Firm's Diary reflected only .3 of an hour resulting in excess billing of 2 hours at \$150 per hour or \$300.

On March 2, 1992, [material redacted] billed 2.4 hours. The Firm's Diary reflected only 1.4 hours resulting in excess billing of 1 hour at \$150 per hour or \$150.

On March 16, 1992, [material redacted] billed 1.8 hours. The Firm's Diary reflected only 1 hour resulting in excess billing of .8 of an hour at \$150 per hour or \$120.

On August 11, 1992, [material redacted] billed 1.8 hours. The Firm's Diary reflected only .8 of an hour resulting in excess billing of 1 hour at \$150 per hour or \$150.

On September 21, 1992, [material redacted] billed 1.9 hours. The Firm's Diary reflected only .9 of an hour resulting in excess billing of 1 hour at \$150 per hour or \$150.

On October 1, 1992, [material redacted] billed 1.7 hours. The Firm's Diary reflected only .7 of an hour resulting excess billing of 1 hour at \$150 per hour or \$150.

On October 7, 1992, [material redacted] billed 1.9 hours. The Firm's Diary reflected only .9 of an hour resulting in excess billing of 1 hour at \$150 per hour or \$150.

APPENDIX

APPENDIX

On October 20, 1992, [material redacted] billed 1.7 hours. The Firm's Diary reflected only .7 of an hour resulting in excess billing of 1 hour at \$150 per hour or \$150.

On September 24, 1992, [material redacted] billed three hours. The Firm's Diary reflected only .3 of an hour resulting in excess billing of 2.7 hours at \$150 per hour or \$405.

On March 30, 1995, [material redacted] billed 3.1 hours. The Firm's Diary reflected only .3 of an hour resulting in excess billing of 2.8 hours at \$172 per hour or \$481.60.

On March 18, 1992, [material redacted] billed 8.5 hours. The Firm's Diary reflected only 6 hours resulting in excess billing of 2.5 hours at \$115 per hour or \$287.50.

On October 21, 1993, [material redacted] billed two hours. The Firm's Diary reflected only .2 of an hour resulting in excess billing of 1.8 hours at \$120 per hour or \$216.

On February 25, 1992, [material redacted] billed 3.5 hours. The Firm's Diary reflected only 2.5 hours resulting in excess billing of 1 hour at \$150 per hour or \$150.

The Firm's Diary provides documented proof that the Firm billed hours exceeding those reflected on the corresponding time record. **The Legal Division will disallow and demand reimbursement of \$9,608.**

Recommendation No. 2: That the FDIC disallow \$12,394 in excessive or inappropriate time charges billed by the Firm.

The Report questioned \$11,122 that the Firm billed RTC (\$10,934) and FDIC (\$188) for services "performed by personnel that were overqualified for the level of task." According to the IPA, the services should have been performed by paralegals rather than attorneys. The IPA also stated that the rate differential between attorneys and paralegals is 37% and therefore multiplied total questioned charges of \$29,552 by 37% to arrive at \$10,934. Below are examples of the work performed by associates:

\$633 - December 8, 1994 - Analyze and prepare summary of January - June 1989 Board of Director's Meeting Minutes.

\$343 - July 28, 1995 - Update case law: strong arm powers of bankruptcy trustee under Section 544 vis-a-vis trust property; prepare case summaries.

\$560 - December 23, 1994 - Organize, index and summarize capital plans and related documents for well 27; review and organize plans and related documents for well 28.

\$560 - December 28, 1994 - Review, organize, index and summarize Director and Officer data including well 31 file 5 ([material redacted] correspondence), well 31 file 1 ([material redacted] personnel file), well 6 file 6 (Director and Officer profiles) and well 6 file 5 (Employee interview notes).

\$316 - December 30, 1994 - Review and analysis of Board response to July 29, 1991 Report of examination; prepare file inventory and summary of Board response to examination report.

\$700 - December 30, 1994 - Revise, organize, analyze, index and summarize [material redacted] files (well 30, files 3 - 7).

\$392 - July 19, 1994 - Coordinate/organize consumer loan information files and binders; [material redacted] and [material redacted] loans.

\$350 - January 6, 1995 - Review, organize, index and summarize 1978 - 1991 Executive Committee minutes; finalize same.

\$420 - January 6, 1995 - Review, organize, index and summarize 1980 - 1992 Annual Meeting minutes.

\$784 - January 23, 1995 - Update and supplement Directors and Officers chart with additional information contained in 1989 - 1992 Board of Directors Meeting minutes; exam reports and appendices, [material redacted] exhibits; criminal referrals, Executive Committee Meeting minutes and Board of Directors Annual Meeting minutes.

The allocation of responsibility between outside counsel and their staff is somewhat subjective. A review of the payment records generally shows that the invoices were thoroughly reviewed by the supervising attorneys and substantial adjustments were made. Absent a clear misallocation of resources, it seems appropriate that the above-described tasks were performed by associates rather than paralegals.

The Legal Division will allow \$12,394.

The Report also states that the Firm billed RTC excessive time charges in the amount of \$1,272. A review of the audit work papers shows the following charges:

	<u>Hours</u>	<u>Amounts</u>
Prepare summary indices for [material redacted] deposition.	5	\$ 375
Continue preparation of [material redacted] deposition summary indices.	1	75
Complete [material redacted] deposition summary index; begin [material redacted] summary index.	2.6	195
Prepare summary/index for [material redacted] deposition.	6.6	495
Prepare draft notice of deposition of [material redacted]; update analysis of Federal local rules: Depositions in light of recent amendments.	1	132
Totals:	<u>16.2</u>	<u>\$1,272</u>

Similar to the above issue of staffing, determination of what constitutes excessive time is subjective. A review of the questioned charges in the amount of \$1,272 shows that a substantial portion (\$1,140) was for services performed by paralegals billing at \$75 per hour. There was only one charge (\$132) that was billed by an attorney (\$132 per hour). It seems that the total number of hours (16.2 hours) was appropriate for the tasks performed. **The Legal Division will allow the \$1,272.**

Recommendation No. 3: That the FDIC disallow \$71,662 of unsupported time charges billed by the Firm.

According to the Report, the Firm billed RTC and FDIC \$71,662 in unsupported time charges. They are itemized as follows:

(\$26,255 for RTC and \$2,057 for FDIC) Time entries could not be located on the time sheets.

(\$32,039) The Firm could not provide time sheets for certain attorneys for the month of January 1993.

(\$1,584) The description of services on the invoices did not agree with the attorneys' original time sheets.

(\$9,613 for RTC and \$144 for FDIC) Time billed on one matter was charged on another matter.

The Firm responds that transcription errors by its staff may have occurred, and that it also lost the original time sheets for January 1993 (except for [material redacted]). The Firm also states that it will be happy to review the affected time sheets and comment further.

As to the first two categories of questioned costs, in December 1996, FDIC's Audit Committee acknowledged and accepted the "Sliding Scale Approach" as an adequate and pragmatic response to audit recommendations identifying missing time sheets. The sliding scale is a procedure that applies five questions to facts related to the missing time sheets. Those questions are as follows:

(1) What is the proportion of audited fees questioned for missing time sheets against all audited fees and expenses? Approximately 4% of audited fees and expenses have been questioned because of unsupported time charges (\$71,662 divided by \$1,747,893)

(2) Were any variances identified between fees billed and time sheets? There were 92 instances in the total amount of \$9,608 which have been identified as variances between the fees billed and time sheets (Firm's Diary and Work Record). See Recommendation No. 1 above.

(3) Were indicia of fraud uncovered? The Report does not state whether indicia of fraud were uncovered in the audit. However, as stated above, 92 instances in the amount of \$9,608 were identified as variances between fees billed and time sheets.

(4) What were the reasons given for the unavailability of the time sheets? As previously stated, the Firm responded that transcription errors may have occurred and that it lost the original time sheets for January 1993 (except for [material redacted]).

(5) Were the legal bills, which were unsupported by time sheets, reasonable and did they represent charges for which the FDIC has received benefits? The Report neither addresses the issue of reasonableness, nor expresses an opinion as to whether benefit was received by the FDIC for the particular invoice entries that were not supported by available time sheets. However, we have not disallowed any charges for “qualitative” reasons (e.g., over staffing, too much time spent, etc.). See response to Recommendation No. 2. Absent evidence to the contrary, we assume the work was done in an acceptable manner.

In the absence of time sheet documentation, a 15% disallowance will be applied to \$60,351 (\$26,255 + \$2,057 + \$32,039). This results in a disallowance of \$9,053. **The Legal Division will disallow and demand reimbursement of \$9,053.**

The Report also questions two other items as “Unsupported Time Charges.” A review of the audit work papers shows that while there were time sheets, the description of services on the invoices did not agree with the time sheets, or time billed on one matter was charged on another matter.

(\$1,584) The description of services on the invoices did not agree with the attorneys’ original time sheets. A review of the audit work papers shows the following example of description in the invoice for 1.2 hours on March 16, 1995, by [material redacted]: “Review plaintiff’s allegations in preparation for analysis of documents at Gemini; Review document requests.” The corresponding description in the time records for 1.2 hours on March 16, 1995, by [material redacted] states the following: “Review of status pleadings, affidavits, attachments to complaint; establish action strategy: investigations, responding to discovery requests.”

The two descriptions of services do not appear to be materially different. Accordingly, **the Legal Division will allow \$1,584.**

(\$9,613 for RTC and \$114 for FDIC) The time billed on one matter was charged on another matter. A review of the audit work papers shows the following example: An invoice was submitted for work performed on May 1, 1995 by [material redacted] for 6.1 hours in the amount of \$457 for [material redacted], while the corresponding time record shows on May 1, 1995, [material redacted] worked 6.1 hours for [material redacted].

The Firm responds that it will be happy to review the entries that formed the basis of this issue and will comment further. At this time, **the Legal Division will disallow and demand reimbursement of \$9,727 (\$9,613 + \$114)**. Should the Firm be able to review the entries that formed the basis of this issue and comment further, the Legal Division may consider the same.

Recommendation No. 4: That the FDIC disallow \$10,004 in fees billed by Lowe which did not include a precise description of the services performed.

The Report states that the narrative descriptions of professional services on time entries did not always adequately detail the services provided to RTC and FDIC and were insufficient to determine the nature of the work performed and the value of the services provided. The amount of \$9,914 was questioned for RTC billings and \$90 for FDIC billings.

According to the Report, the criteria used by the IPA in determining “vague” descriptions are found in the RTC Outside Counsel Deskbook, dated January 1992, which states, “For each matter, the listing of fees and services shall be fully itemized with individual narrative entries showing . . . a precise description of the service(s) performed.”

The Report states that examples of vague descriptions include: “review documents,” “draft memorandum,” “draft letter,” “draft correspondence,” “review pleadings,” “review applicable law,” “review research to be performed,” and “review of things to be done.”

However, a review of the audit work papers shows the following examples of invoice descriptions which the IPA considered vague:

Conference call with Attorney [material redacted], et al.
 Multiple telephone calls to and from Attorney [material redacted].
 Meet with Attorney [material redacted]; Jury trial before Judge [material redacted].
 Meet with [material redacted], Asset Manager [material redacted] and attorney [material redacted].
 Appear before Judge [material redacted]; Meet with Attorney [material redacted].
 Assess need for use of witness [material redacted] with oversight attorney [material redacted];
 Teleconference with Attorney [material redacted], Attorney [material redacted], [material redacted] and [material redacted], Attorney [material redacted].

The RTC’s RLIS Forms and Procedures Deskbook for Outside Counsel first published in January 1992 (“Deskbook”) does not necessarily require that entries describe the substance of telephone calls or conferences. The Deskbook requires a description of the service performed, and that entries satisfy the “precise description” required by the Deskbook. The above entries are sufficiently precise under Legal Division guidelines. The invoice entries describe communications that identify both participants, the billing attorney and the other party. Although the OIG would prefer that the subject matter of the communications also be disclosed in the billing entries (as well as the identities of the participants), this has never been required

by the RTC or FDIC. The Deskbook requires “a precise description of the services performed” and the RTC Guide for Outside Counsel mandates a “traditional legal bill.” The questioned entries are acceptable under either standard.

Other examples of entries which were considered vague are as follows:

Prepare/edit trial memorandum; trial preparations
 Review memoranda of law: Trial preparations
 Travel to Atlanta: Meet with Attorney [material redacted]
 Prepare reply brief
 Prepare for hearing; outline argument

While these entries are less precise, they still appear to meet RTC and FDIC standards communicated to outside counsel. FDIC guidance contained in the Outside Counsel Fee Bill Payment Program Instruction Manual (October 1991) gives the following examples of acceptable descriptions: “Telephone call, preparation of motion, conference with Susan Smith,” provided they are separate entries.

Based on the applicable Division standards, **the Legal Division will allow the \$10,004 questioned for vague descriptions.**

Recommendation No. 5: That the FDIC require responsible personnel to analyze the qualifications for employees who worked on RTC matters, but were not listed in LSA, and determine how much of the \$95,120 in questioned costs for these charges should be retroactively ratified.

While the IPA acknowledged in the Report that the Firm entered into several LSAs, the IPA still questioned \$95,120 in charges by attorneys and paralegals who, according to the IPA, were not approved in the LSAs. The Firm provided the Legal Division with copies of its LSAs. Below is a comparison of the approved contract rates pursuant to the Firm’s LSAs and the rates charged in the invoices. With the exception of three employees, the rates are identical.

1. Hourly Rates Approved in the Firm’s May 13, 1991 LSA which remained in effect until May 13, 1993; Hourly Rates Charged in Invoices Submitted by the Firm from February 1992 through February 24, 1996:

[material redacted]	\$150	[material redacted]	\$150
[material redacted]	\$150	[material redacted]	\$150
[material redacted]	\$120	[material redacted]	\$120
[material redacted]	\$115	[material redacted]	\$115
[material redacted]	\$75	[material redacted]	\$75
[material redacted]	\$65	[material redacted]	no bill listed in exhibit

2. March 3, 1992 LSA which remained in effect until March 3, 1994:

[material redacted]	\$150	[material redacted]	\$150
[material redacted]	\$120	[material redacted]	\$120
[material redacted]	\$120	[material redacted]	\$120
[material redacted]	\$120	[material redacted]	\$120
[material redacted]	\$135	[material redacted]	no bill listed in exhibit
[material redacted]	\$120	[material redacted]	\$120
[material redacted]	\$60	[material redacted]	no bill listed in exhibit
[material redacted]	\$75	[material redacted]	\$76 (over \$1 per hour)

3. February 18, 1994 LSA which remained in effect until February 18, 1996:

[material redacted]	\$172	[material redacted]	no bill listed in exhibit
[material redacted]	\$156	[material redacted]	no bill listed in exhibit
[material redacted]	\$140	[material redacted]	no bill listed in exhibit
[material redacted]	\$132	[material redacted]	no bill listed in exhibit
[material redacted]	\$132	[material redacted]	no bill listed in exhibit
[material redacted]	\$100	[material redacted]	\$120 (over \$20 per hour)
[material redacted]	\$68	[material redacted]	no bill listed in exhibit

The above comparison shows that the Firm billed in accordance with the rates approved in their LSAs, however, there were three exceptions, as follows:

- (1) Paralegal [material redacted] who was approved at \$75 per hour but billed at \$76 per hour;
 - (2) Associate [material redacted] who was approved at \$100 per hour but billed at \$120 per hour;
- and
- (3) Associate [material redacted] who was not listed in any LSA who billed at \$145 per hour.

In connection with [material redacted] and [material redacted], the Report's exhibit shows that there were 86 charges by [material redacted] (62) and [material redacted] (24), who were questioned as "Unauthorized Personnel." While the Report's exhibit states the amount for each of these 86 charges, it does not state the number of hours charged for any of them. We calculated the number of hours charged by [material redacted] and [material redacted] in the following manner:

For [material redacted], the sum total of the 62 charges is \$7,663. We divided this amount by [material redacted]'s hourly billing of \$76 to arrive at 101 hours. Because [material redacted] overcharged RTC by \$1 per hour (\$76 billing rate less \$75 approved rate), **the Legal Division will disallow \$101** (101 hours multiplied by \$1).

For [material redacted], the sum total of 24 charges is \$8,952. We divided this amount by [material redacted]'s hourly billing of \$120 to arrive at 75 hours. Because [material redacted] overcharged RTC by \$20 per hour (\$120 billing rate less \$100 approved rate), **the Legal Division will disallow \$1,500** (75 hours multiplied by \$20).

With respect to associate [material redacted] who billed at \$145 per hour but not listed in any LSA, we will allow and ratify the lowest rate for an associate (\$115 per hour) because there was no supporting information to justify \$145 per hour such as years of experience, discount from normal billing rate, etc. The rates approved for associates in the LSAs ranged from \$115 to \$156 per hour. We calculated the amount to allow and ratify in the following manner: The sum total of the 21 charges by [material redacted] is \$3,147. We divided this amount by [material redacted]'s hourly billing of \$145 to arrive at 21.7 hours. **The Legal Division will allow and ratify \$2,496** (\$115 per hour multiplied by 21.7 hours). **The Legal Division will disallow the remaining \$651** (\$3,147 less \$2,496).

Recommendation No. 6: That the FDIC disallow \$312 in unallowable expenses billed by the Firm.

The Report states that the Firm billed RTC for certain expenses now allowable under RTC policies and procedures, and this resulted in questioned costs of \$312. This amount is itemized as follows:

(\$120) The Report states that the Firm billed the RTC for U.S. Bankruptcy court filing fees in the amount of \$120. The Firm responds that it provided copies of U.S. Code to the deputy clerk of the bankruptcy court exempting the FDIC/RTC from payments of costs, however, the deputy clerk did not accept such documentation or the Firm's interpretation of the statute. **The Legal Division will allow the \$120.**

(\$192) The Report also states that the Firm billed the RTC for nonbillable travel expenses, including parking fees in the amount of \$192. The Firm responds that \$129 of the \$192 was payment for hotel room and parking in a hotel which was more than 50 miles distance from the attorney's residence. According to the Firm, the attorney whose residence is in Herndon, Virginia, had to travel to and stay in a hotel in Baltimore. The Firm further states that this is reimbursable travel cost because the place of temporary duty has a distance of more than 50 miles from the attorney's residence. **The Legal Division will allow \$192.**

Recommendation No. 7: That the FDIC disallow all undocumented reimbursable expenses billed by the Firm in the amount of \$2,557.

The Report states that the Firm billed the RTC \$2,557 in reimbursable expenses for which it could not provide adequate supporting documentation, and expenses which were billed to incorrect matters. The expenses are itemized as follows:

(\$2,544) Unsupported expenses (no original vendor invoices, e.g., courier service, copy charges)

(\$13) Inappropriate/insufficient support (e.g., long distance telephone charges)

The Firm provided supporting documentation regarding a questioned item dated March 1994 in the amount of \$339. The document provided is a copy of a hotel receipt dated March 16 and 17, 1994. According to the Firm, while \$339 was billed to the RTC, only \$253 (payment for hotel room for March 16 and 17, 1994) should have been charged.

The Legal Division will allow \$253. At this time, it will disallow and demand reimbursement of \$2,304. Should the Firm be able to provide the necessary documentation for the other questioned reimbursable expenses, the Legal Division may consider the same.

The Legal Division has determined that it will disallow and seek recovery of fees and expenses as follows (questioned costs are shown in parentheses):

1. Unallowable Professional Fees	(\$17,655)	\$11,414
2. Excessive/Inappropriate Time Charges	(\$12,394)	-0-
3. Unsupported Time Charges	(\$71,662)	18,780
4. Vague Descriptions	(\$10,004)	-0-
5. Unauthorized Personnel	(\$95,120)	2,252
6. Unallowable Expenses	(\$312)	-0-
7. Unsupported Reimbursable Expenses	(\$2,557)	2,304
Total:		<u>\$34,750</u>

The Assistant General Counsel is authorized to make such minor accounting corrections as may be required by the OIG but which do not affect the substantive position stated in this memorandum. The Legal Division expects to complete the collection process within 180 days from the issuance of the final audit Report by the OIG.

Attachments:

Tab A - OIG Draft Audit Report

Tab B - Firm's Responses to the Draft Audit Report